



# Senate

General Assembly

**File No. 608**

January Session, 2005

Substitute Senate Bill No. 1124

*Senate, May 2, 2005*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING THE CUSTODY OF REMAINS OF DECEASED PERSONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 45a-318 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 (a) Any person eighteen years of age or older, and of sound mind,  
4 may execute in advance of such person's death a [cremation  
5 authorization on a form authorized by the Department of Public  
6 Health for the incineration or cremation of such person's body upon  
7 the death of such person. Any such document shall be signed and  
8 dated by the maker, and attested in writing by two witnesses that the  
9 maker was of sound mind and capacity at the time of execution of the  
10 authorization. The maker shall include on the form authorized by the  
11 Department of Public Health the name, residence address and  
12 residence telephone number for the spouse or if there is no surviving  
13 spouse, then the next of kin or designated person, duly acknowledged

14 in writing, who shall be notified within the forty-eight-hour waiting  
15 period prior to a cremation upon the death of such person. If the  
16 spouse, next of kin or designated person is unavailable at the time of  
17 death of such person, the funeral director shall refer this matter to the  
18 Court of Probate for the district of the domicile or residence of the  
19 deceased to grant custody and control to some suitable person] written  
20 document, subscribed by such person and attested by two witnesses,  
21 either: (1) Directing the disposition of such person's body upon the  
22 death of such person, which document may also designate an  
23 individual to have custody and control of such person's body and to  
24 act as agent to carry out such directions; or (2) if there are no directions  
25 for disposition, designating an individual to have custody and control  
26 of the disposition of such person's body upon the death of such person.  
27 Such disposition shall include, but not be limited to, cremation,  
28 incineration, disposition of cremains, burial, method of interment and  
29 cryogenic preservation. Any such document may designate an  
30 alternate to an individual designated under subdivision (1) or (2) of  
31 this subsection.

32 [(b) The custody and control of the remains of deceased residents of  
33 this state shall belong to the surviving spouse of the deceased. If the  
34 surviving spouse had abandoned, and at the time of death was living  
35 apart from, the deceased, or if there is no spouse surviving, then such  
36 custody and control shall belong to the next of kin, unless the  
37 decedent, in a duly acknowledged writing, designated another person  
38 to have custody and control of the remains of the decedent. The court  
39 of probate for the district of the domicile of the deceased may at any  
40 time, upon the petition of any of the kin or such person, award such  
41 custody and control to that person who seems to the court most fit to  
42 have the same. If a deceased resident of the state leaves no spouse, next  
43 of kin or designated person surviving, or if the spouse, next of kin or  
44 designated person cannot be contacted after due diligence to assume  
45 custody and control of the remains of such decedent as provided in  
46 this section, or if the spouse, next of kin or designated person refuses  
47 to assume such custody and control, the court of probate for the  
48 district of the domicile or residence of the deceased may, upon the

49 petition of a selectman or chief officer of such town, a licensed funeral  
50 director or the director of health of such town, grant such custody and  
51 control to some suitable person. If a person has executed a cremation  
52 authorization for the incineration or cremation of such person's body  
53 upon death on a form authorized by the Department of Public Health,  
54 as described in subsection (a) of this section, and a good faith effort has  
55 been made to notify the spouse, next of kin or designated person, or an  
56 order from the Probate Court has been obtained, then such instructions  
57 may be relied upon by any person acting reasonably and in good faith  
58 in reliance upon such written instructions and shall permit any  
59 licensed funeral director to obtain a cremation certificate, a cremation  
60 permit and carry out the cremation, in accordance with the provisions  
61 of section 19a-323. If the funeral director's decision and conduct in the  
62 performance of a cremation was reasonable and warranted under the  
63 circumstances, then no person may challenge the funeral director's  
64 decision to obtain a cremation certificate, a cremation permit and the  
65 carrying out of such cremation.

66 (c) This section shall not apply to the disposition of a body of a  
67 deceased person under the provisions of sections 19a-270 and 54-102;  
68 nor shall it affect the powers and duties of the Chief Medical Examiner  
69 under the provisions of sections 19a-406 to 19a-408, inclusive.]

70 (b) No person may challenge a funeral director's decision to carry  
71 out the directions for disposition contained in a document executed for  
72 the purposes of subsection (a) of this section if the funeral director's  
73 decision and conduct in carrying out such directions for disposition in  
74 reliance on such document was reasonable and warranted under the  
75 circumstances.

76 (c) In the absence of a written designation of an individual pursuant  
77 to subsection (a) of this section, or in the event that an individual and  
78 any alternate designated pursuant to subsection (a) of this section  
79 declines to act or cannot be located within forty-eight hours after the  
80 time of death or the discovery of the body, the following individuals,  
81 in the priority listed, shall have the right to custody and control of the

82 disposition of a person's body upon the death of such person, subject  
83 to any directions for disposition made by such person pursuant to  
84 subdivision (1) of subsection (a) of this section:

85 (1) The deceased person's spouse, unless such spouse abandoned  
86 the deceased person prior to the deceased person's death or has been  
87 adjudged incapable by a court of competent jurisdiction;

88 (2) The deceased person's surviving adult children;

89 (3) The deceased person's surviving parents;

90 (4) The deceased person's surviving siblings;

91 (5) Any adult person in the next degree of kinship in the order  
92 named by law to inherit the deceased person's estate, provided such  
93 adult person shall be of the third degree of kinship or higher;

94 (6) Such adult person as the Probate Court shall determine.

95 (d) A document executed by a person for the purposes of subsection  
96 (a) of this section shall revoke any document previously executed by  
97 such person for the purposes of said subsection or any prior cremation  
98 authorization or other authorization for the disposition of remains  
99 executed by such person and may be in substantially the following  
100 form, but the use of such form shall not preclude the use of any other  
101 form:

102 DISPOSITION OF REMAINS AND

103 APPOINTMENT OF AGENT

104 I, ..., of ..., being of sound mind, make known that upon my death  
105 my body shall be disposed of in the following manner:

106 (Insert desired disposition directions)

107 I appoint ..., having an address and telephone number of ..., to  
108 have custody and control of my body to act as my agent to carry out

109 the disposition directions expressed in this document, and in the  
110 absence of disposition directions, to have custody and control of my  
111 body and to determine the disposition of my body. If .... shall decline  
112 to act or cannot be located within forty-eight hours of my death or the  
113 discovery of my body, then ...., having an address and telephone  
114 number of ...., shall act in that person's place and stead.

115 Executed at (insert location of execution), Connecticut on (insert  
116 date of execution).

117 ....

118 (Signature)

119 Signed in our presence by .... who, at the time of the execution of  
120 this document, appeared to be of sound mind and over eighteen years  
121 old.

122 .... of ....

123 ....

124 (Signature of witness)

125 .... of ....

126 ....

127 (Signature of witness)

128 (e) The court of probate for the district of the domicile or residence  
129 of a deceased person shall have jurisdiction to hear and decide any  
130 issue regarding the custody, control or disposition of the deceased  
131 person's body, upon the petition of any individual designated by the  
132 deceased person pursuant to subsection (a) of this section, the  
133 individual entitled to custody and control under subsection (c) of this  
134 section if no designation is made pursuant to subsection (a) of this  
135 section, the first selectman, chief executive officer or director of health  
136 of the town in which the deceased person's body is being held, or the

137 funeral director holding the deceased person's body, and upon such  
138 notice to interested parties as the court shall determine.

139 (f) This section shall not (1) apply to the disposition of the body of a  
140 deceased person under the provisions of sections 19a-270 and 54-102,  
141 (2) affect the powers and duties of the Chief Medical Examiner under  
142 the provisions of sections 19a-406 to 19a-408, inclusive, or (3) affect the  
143 making of anatomical gifts under the provisions of sections 19a-279a to  
144 19a-279l, inclusive.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2005	45a-318

**JUD**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

Passage of this bill will result in no fiscal impact for the Department of Public Health or the Office of the Chief Medical Examiner.

**OLR Bill Analysis**

sSB 1124

**AN ACT CONCERNING THE CUSTODY OF REMAINS OF DECEASED PERSONS****SUMMARY:**

This bill expands the law governing advance directives people can create when they wish to have their remains cremated. It permits them to include disposal options other than cremation (including burial, interment, or cryogenic preservation) or to designate someone to make decisions on their behalf. It also simplifies the process for creating advance directives, includes a model form, and eliminates a requirement that a Public Health Department-authorized form be used.

The bill limits the steps funeral directors must take before honoring the advance directive. Existing law governs the custody and disposal of remains when the decedent has died without executing an advanced directive or when the designated representative or next of kin cannot be located or refuses to take custody of the remains.

EFFECTIVE DATE: October 1, 2005

**MODEL FORM**

The model form includes most of the information currently required under advance cremation directive law. But it does not require the maker to provide the name, address, and telephone number of his next of kin if the directive names someone else as the custodian or decision-maker with respect to the disposition of his remains, as is currently required.

The bill declares that execution of an advance directive under the bill's terms revokes any similar document the maker previously executed, except the designation of another adult to make anatomical gift decisions pursuant to existing state law (CGS § 1-56r(a)) or otherwise enforceable anatomical gifts made during his lifetime.

**FUNERAL DIRECTORS**

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The bill eliminates funeral directors' obligations to attempt to contact the decedent's next of kin when another person has been designated in the directive, and precludes challenges to actions they take to comply with the directive's terms, so long as their actions were reasonable and warranted under the circumstances.

It retains the current law's requirement that funeral directors seek a probate court ruling when the decedent's designated custodian or next of kin have not been located within 48 hours or refuses to act.

## **BACKGROUND**

### ***Next of Kin***

By law, the remains of a deceased person belong to his next of kin, unless he has legally appointed someone else. Next of kin are, in order of priority, the decedent's:

1. surviving spouse, unless she abandoned him or is mentally incompetent;
2. surviving adult children;
3. surviving siblings; and
4. any other adult in the degree of kinship in the order named by law to inherit the decedent's estate, provided he is within at least the second or third degree of kinship (e.g., cousins, aunts, and uncles, and grandparents).

### ***Probate Court***

The probate court for the district in which the decedent last resided has jurisdiction to resolve disagreements between interested parties involving the custody and disposition of a decedent's remains.

### ***Related bill***

sHB 5799, favorably reported by the Public Health Committee, establishes a process and requirements for funeral directors to dispose of the cremated remains of a deceased person, including unclaimed or unaccepted remains.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 40    Nay 0